



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R03-OAR-2014-0568; FRL-9950-98-Region 3]

Outer Continental Shelf Air Regulations Consistency Update for Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve an update to a portion of the Outer Continental Shelf (OCS) Air Regulations for Maryland. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act, as amended in 1990 (CAA or the Act). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Maryland is the designated COA. The intended effect of approving the OCS requirements for the Maryland Department of the Environment is to regulate emissions from OCS sources in accordance with the requirements for onshore sources.

DATES: This rule is effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[insert date 60 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R03-OAR-2014-0568** at <http://www.regulations.gov>, or via email to campbell.dave@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814-2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55 which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the CAA. Forty

CFR part 55 applies to all OCS sources offshore of the states except those locations in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the CAA requires that for such source locations within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the source were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to 40 CFR 55.12 of the OCS rule, consistency reviews will occur: (1) At least annually; (2) upon receipt of a Notice of Intent under 40 CFR 55.4; or, (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This action is being taken in response to requirements submitted by Maryland on May 6, 2016. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as the corresponding onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist for onshore sources. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

EPA reviewed Maryland's rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the CAA; that they are not designed expressly to prevent exploration and development of the OCS; and, that they are applicable to OCS sources. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. In addition, EPA has excluded administrative or procedural rules¹ and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards. EPA finds that Maryland's rules meet these requirements.

III. Final Action

EPA is taking direct final action to incorporate the applicable provisions of the Code of Maryland Regulations into 40 CFR part 55 as required under section 328(a)(1) of the CAA. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of this Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the update to Maryland's OCS regulations if adverse comments are filed. This rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

¹ Each COA that has been delegated the authority to implement and enforce 40 CFR part 55 will use its administrative and procedural rules as if onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements.

EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Maryland Regulations described in the amendments to 40 CFR part 55 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as the corresponding onshore air quality control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the corresponding regulations for onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with the requirements for onshore areas, without the exercise of any policy discretion by EPA. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the OCS requirements are not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **Insert date 60 days after date of publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of

proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action pertaining to OCS sources in Maryland may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer Continental Shelf, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 2, 2016.

Shawn M. Garvin,
Regional Administrator,
Region III.

For the reasons discussed in the preamble, 40 CFR part 55 is amended as follows:

Part 55 -- Outer Continental Shelf Air Regulations

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising paragraph (e)(10)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e)***

(10)***

(i)***

(A) State of Maryland Requirements Applicable to OCS Sources, May 6, 2016.

3. In appendix A to part 55, the entry for Maryland is revised to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, By State

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Maryland:

(a) State Requirements.

(1) The following State of Maryland requirements are applicable to OCS Sources, May 6, 2016, State of Maryland-Department of the Environment. The following sections of Code of Maryland Regulations (COMAR) Title 26 Subtitle 11:

COMAR 26.11.01- General Administrative Provisions (Effective as of February 15, 2016)

COMAR 26.11.02- Permits, Approvals, and Registrations (Effective as of December 10, 2015)

COMAR 26.11.03- Permits, Approvals, and Registration- Title V Permits (Effective as of November 12, 2010)

COMAR 26.11.05- Air Pollution Episode System (Effective as of November 12, 2010)

COMAR 26.11.06- General Emission Standards, Prohibitions, and Restrictions (Effective as of July 08, 2013)

COMAR 26.11.07- Open Fires (Effective as of November 12, 2010)
COMAR 26.11.08- Control of Incinerators (Effective as of February 15, 2016)
COMAR 26.11.09- Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel-Burning Installations (Effective as of July 20, 2015)
COMAR 26.11.13- Control of Gasoline and Volatile Organic Compound Storage and Handling (Effective as of July 21, 2014)
COMAR 26.11.15- Toxic Air Pollutants (Effective as of November 12, 2010)
COMAR 26.11.16- Procedures Related to Requirements for Toxic Air Pollutants (Effective as of November 12, 2010)
COMAR 26.11.17- Nonattainment Provisions for Major New Sources and Major Modifications (Effective as of July 08, 2013)
COMAR 26.11.19- Volatile Organic Compounds from Specific Processes (Effective as of September 28, 2015, 2012)
COMAR 26.11.20- Mobile Sources (Effective as of November 12, 2010)
COMAR 26.11.26- Conformity (Effective as of November 12, 2010)
COMAR 26.11.33- Architectural Coatings (Effective as of November 12, 2010)
COMAR 26.11.35- Volatile Organic Compounds from Adhesives and Sealants (Effective as of November 12, 2010)
COMAR 26.11.36- Distributed Generation (Effective as of June 13, 2011)
COMAR 26.11.39- Architectural and Industrial Maintenance (AIM) Coatings (Effective as of April 2016)

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